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No. 88-1140

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1988

ROBERT W. LUDWIG, JR.,

Petitioner,

v.

EVERGREEN OVERLOOK, INC., et al.

Respondents

OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF SPECIAL APPEALS OF MARYLAND

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24pp

QUESTION PRESENTED FOR REVIEW

Was due process or equal protection denied to Robert W. Ludwig, Jr. who was given a jury trial on the merits; who appealed the verdict to the Court of Special Appeals; who failed to comply with the mandatory rules of procedure on appeal; and whose Petition for Certiorari to the Maryland Court of Appeals was denied?

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STATEMENT OF THE CASE

Petitioner, Robert W. Ludwig, Jr., is an attorney, who was admitted to the practice of law in Washington, D.C., at the time that he commenced his lawsuit in the Circuit Court for Prince George's County.

Ludwig had signed a form con-

tract to purchase a house which was to be built. That form document was not accepted by the developer and was never counter signed by anyone acting on behalf of the developer.

On the date set for settlement on the property, Ludwig filed this lawsuit. Ludwig had a dispute over the cost of the house, as built, with extras which had been added to the basic house at his request. That dispute prompted him to reject settlement, with an escrow, in order to cloud title to the real property with the litigation. That cloud, on the real property, prevented the sale or transfer of the property to any buyer who would require title insurance.

After he filed the suit, through counsel, he tried several short cuts to his goal - the house on his terms. The case was eventually assigned to a specific Judge for pre-trial and trial.

At the trial of the case, Ludwig was allowed to re-open his case twice, in order to present additional evidence or testimony. Ludwig had apparently decided, after each closing, that he had failed to include evidence or testimony which he felt was relevant or material. Objection was made to re-opening the case. But, he was allowed to re-open it twice before he finally tired of his disjointed case presentation.

The jury verdict was not

acceptable to him. He had won the right to buy the property, at a price he did not want to pay. When he equivocated on a settlement date, the court entered an order requiring the settlement by a date certain for the price set by the jury. The court order did not grant specific performance, only transfer of the title for payment.

Prior to the date, set by the order, Ludwig appealed to the Court of Special Appeals. Despite his own law degree, and the assistance of outside counsel, he did not include relevant parts of the case below, in his record on appeal. He did include several

hundred pages, carefully selected in an effort to buttress his opinion of the appealable issues in the matter. The foundation of the appeal, the pleadings and responses to the pleadings, were not included. Those pleadings framed the issues which the trial court had to consider as the plaintiff's disjointed presentation progressed. It was those pleadings which would have been necessary to determine whether the trial Judge properly or improperly ruled on matters; whether the trial Judge properly or improperly instructed the jury; whether the trial Judge permitted all of the triable issues to be aired.

As a result of this omission, the appeal was dismissed. Embarrassed by the oversight, and in an effort to continue the cloud on the property, Robert W. Ludwig, Jr. petitioned for certiorari to the Court of Appeals of Maryland. In that petition, his only issue was whether or not the Court of Special Appeals had abused its discretion when it dismissed his appeal. Certiorari was denied.

The Clerk of the lower Court had set the supersedeas bond in an amount greater than Two Hundred Thousand Dollars ($200,000.00), which represented the price set by the jury on the property, plus interest which would accrue, and costs. Ludwig, on motion, had the

bond reduced to Fifty Thousand Dollars ($50,000.00). Then, he did not post the bond until the holder of the title to the property sought to execute on the judgment. In 1988, months after he took the appeal, and months after the bond had been reduced on his motion, he finally filed the bond.

After Certiorari was denied, the petitioner, Ludwig, renewed a motion which had been filed while the petition for certiorari was pending. In that motion, he sought to have the lower Court revise the prior judgment which he had appealed. The lower Court denied that motion and entered a formal Order on December 30,

1988, settling the monetary amount due from Ludwig to the holder of the title.

Ludwig was not yet ready to concede that he had misconceived his remedy at the outset; that he had mistried his case in the lower Court; that he had failed to comply with the rules on appeal; and that he had been accorded all of the due process and/or equal protection to which he was entitled.

On January 9, 1989, Ludwig filed this Petition for Certiorari with the Supreme Court. On the same date, in the Circuit Court for Prince George's County, where this litigation began, through yet another attorney, he filed a Motion to Alter or to

Amend the December 30, 1988 Judgment. That Motion is still pending in the Circuit Court for Prince George's County. It is yet another attempt by Mr. Ludwig, to avoid the consequences of his actions.

REASONS FOR DENYING THE WRIT

Ludwig depicts himself as a naive, young lawyer, who has been victimized so thoroughly by the system that he has effectively been denied due process or equal protection.

Petitioner has cited some cases to which no argument can be taken. These Respondents will concede that an appeal should be dismissed for bad faith or flagrant disregard of court orders. Respondents will concede that egregious cases should

be dismissed.

Even if Ludwig doesn't see his actions and conduct as egregious, or in bad faith, his bare allegations that he has been denied due process and/or equal protection require more support than that contained in his petition.

Ludwig has cited the pertinent provisions of Maryland appellate Rule 1028, on page five (5) of his Petition. He has even emphasized that the rule requires inclusion of material that is reasonably necessary for the determination of the questions on appeal.

Petitioner believes that supplying more than four

hundred (400) pages of material as part of the record extract complies with this rule. That is not a tenable position.

Ludwig began the lawsuit with a complaint making bald allegations. He subsequently amended that lawsuit to include additional allegations, including fraud. Still later he amended the entire complaint to add four (4) additional parties. Answers, and other pleadings, were filed on behalf of the various defendants as the allegations were raised, or as the pleadings were amended.

Ludwig did not see fit to include those pleadings which formed the foundation of his

alleged causes of action against the various defendants. Nor did he see fit to include the defendants' responses or replies to his allegations. His omission impaired the ability of the Appeals Court to weigh those issues which Ludwig claimed had been improperly tried, or had been improperly resolved against him by Court rulings.

Ludwig has not explained his failure to include those relevant portions from the lower Court. He has tried to excuse himself by inferring that the omitted portions were not necessary to decide the appeal. It is apparent from his intellectual myopia that he expected the Judges to rummage through the four hundred (400)

plus pages of the appendix to divine the issues which the lower Court had before it at the time of the trial. The appellate Judges were not obligated to do that. Petitioner Ludwig was. He didn't!

The irrelevant issues which he has injected into his Petition (by citing cases dealing with the recusal of a Judge or the construction of Rule 23) do not give any support to his position and provide no guidance to a disposition of this matter.

The case of Wyndham v. Haines, 305 Md. 269, 503 A.2d 719 (1986) affirms that the provisions of Maryland rule 1028 (formerly Rule 828) are discretionary. A discretionary sanction leaves it to the

intelligence and experience of the Judge, or the panel, to exercise, or to decline to exercise, that discretion in a particular manner. Mr. Ludwig is not satisfied with the application of that discretion in this case, so he characterizes it as an abuse of discretion resulting in a denial of equal protection and/or due process. He has not demonstrated any abuse.

In the Wyndham case, supra, the discretionary decision favored the appellant, at the expense of the appellee. The appellee would have as much right, in that case, to claim that he was denied due process and equal protection, as Ludwig does in this case.

In the case of Eldwick Homes

Association, Inc. vs. Harvey L. Pitt, et al. 36 Md. App. 211, 373 A.2d 957 (1977), the Court of Special Appeals specifically addressed rule 1028 (b) (1). In the opinion, the Maryland Court of Special Appeals reviewed several prior cases on the same point, including Prime Contractors, Inc. v. Mayor of Baltimore, 241 Md. 55, 215 A.2d 214 (1965); Platt v. Wilson, 191 Md. 371, 62 A.2d 191 (1948).

In the Eldwick Homes Association, Inc. case, the Court of Special Appeals, closed its opinion by stating:

> Inasmuch as Md. Rule 828 as interpreted by the Court of Appeals requires dismissal and under the circumstances that Md. rule 1028 is substantially the same and

> differs only in that it is made applicable to this court, we believe we are compelled to follow the lead of the court of appeals in Prime and Platt and dismiss the appeal.

The Appeals courts, in Maryland, have been telling parties on appeal, for more than thirty (30) years, that the Appellate Rules are written for a purpose. Those rules must be complied with. There are sanctions for the failure to comply with the rules. There have been several decisions which have applied those sanctions, in order to warn non-complying parties that dismissal could, and would, be imposed.

Ludwig was an attorney. He had co-counsel in the case. They were both admitted to practice

law at the time that the appeal was taken. Presumptively, they read and understood the rules on Appeal.

The sanction imposed by the court, for the failure to comply with the rules, after prior decisions relating to similar deficiencies, hardly constitutes a denial of due process, or denial of equal protection.

CONCLUSION

This Petition for Certiorari should be denied. Mr. Ludwig is a brash, self-centered person whose attempts to achieve his own ends have failed to this point. In a final effort to evoke sympathy for his self generated plight, he has made bald allegations that he

has been denied due process and/or equal protection. His bald allegations are that and nothing more.

Respectfully Submitted,

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Dated: February 8, 1989

CERTIFICATE OF SERVICE

I, Walter W. Pitsenberger, being over the age of 18 years, hereby certify that I have this 10th day of February, 1989, mailed three (3) copies of the foregoing Opposition to Petition for a Writ of Certiorari to the Court of Special Appeals of Maryland upon petition of Robert W. Ludwig, Jr., and by mailing such copies to the attorneys of record or parties, in sealed envelopes, first class postage prepaid, and addressed as follows:

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